

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION**

**BERNARDO HERNANDEZ, ID # 422817,**      )  
Petitioner,    )  
vs.    )      **No. 3:14-CV-0106-D**  
    )  
**RICHARD WATHEN, Warden,**                            )  
Respondent.    )

**ORDER**

After making an independent review of the pleadings, files, and records in this case, and the findings, conclusions, and recommendation of the magistrate judge, the court concludes that the findings and conclusions are correct. It is therefore ordered that the findings, conclusions, and recommendation of the magistrate judge are adopted, and the motion to vacate sentence under 28 U.S.C. § 2255 is summarily dismissed with prejudice. The court dismisses without prejudice petitioner's claims regarding his sex offender classification and denies with prejudice his remaining claims as barred by the statute of limitations.\*

Considering the record in this case and pursuant to Fed. R. App. P. 22(b), Rule 11(a) of the Rules Governing §§ 2254 and 2255 proceedings, and 28 U.S.C. § 2253(c), the court denies a certificate of appealability. The court adopts and incorporates by reference the magistrate judge's findings, conclusions, and recommendation filed in this case in support of its finding that the petitioner has failed to show (1) that reasonable jurists would find this court's "assessment of the constitutional claims debatable or wrong," or (2) that reasonable jurists would find "it debatable whether the petition states a valid claim of the denial of a constitutional right" and "debatable

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\*On February 21, 2014 petitioner filed a notice of appeal in which he purports to take an appeal to the Fifth Circuit from the findings, conclusions, and recommendation of the magistrate judge. Because petitioner has taken an appeal from an unappealable order, the filing of the notice of appeal does not deprive this court of subject matter jurisdiction to enter today's ruling and judgment.

whether [this court] was correct in its procedural ruling.” *Slack v. McDaniel*, 529 U.S. 473, 484 (2000).

If petitioner files a notice of appeal,

- ( ) petitioner may proceed *in forma pauperis* on appeal.
- (X) petitioner must pay the \$505.00 appellate filing fee or submit a motion to proceed *in forma pauperis*.

**SO ORDERED.**

February 28, 2014.

  
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SIDNEY A. FITZWATER  
CHIEF JUDGE